

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**TIM & AMY MINTNER,
Plaintiffs**

v.

**LIBERTY MUTUAL INSURANCE
CORPORATION,
Defendant**

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CIVIL ACTION NO. 1:16-CV-01204

**NOTICE OF REMOVAL OF ACTION UNDER
28 U.S.C. §§ 1332 AND 1441(b) (DIVERSITY)**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Liberty Mutual Insurance Corporation (“Liberty”), hereby petitions this Court pursuant to 28 U.S.C. §§ 1332, 1441 and 1446 for removal, on the basis of diversity jurisdiction, to the United States District Court for the Western District of Texas, Austin Division, of the action styled *Tim & Amy Mintner v. Liberty Mutual Insurance Corporation*; Cause No. D-1-GN-16-004967, currently pending in the 419th Judicial District Court of Travis County, Texas (the “State Court Case”), and in support thereof would respectfully show this Court as follows:

**I.
FACTS**

1. Plaintiffs Tim & Amy Mintner filed suit in the State Court case on September 30, 2016, as the result of alleged delay or denial of benefits under their policy of insurance. Plaintiffs allege that Liberty breached its contract with Plaintiffs, breached the common law duty of good faith and fair dealing and violated provisions of the Texas Insurance Code and Texas Deceptive Trade Practices Act in the adjustment and handling of Plaintiffs’ claim by delaying and denying benefits following their loss on or about April 27, 2016. *See Plaintiffs’ Original Petition* (the “Petition”) at ¶¶ 5-18. Plaintiffs also seek actual, compensatory damages,

exemplary damages under the Texas Insurance Code, court costs and attorneys' fees for Liberty's wrongful denial and statutory prompt payment penalties. Liberty denies that Plaintiffs are entitled to these benefits or damages.

2. Liberty was served with the Petition and citation on October 5, 2016. Liberty filed its Original Answer and Verified Denial on October 28, 2016. A true and correct copy of all pleadings, process, orders, and correspondence served in this action is attached hereto as Exhibit "A" and incorporated herein by reference.

3. Plaintiffs assert in their State Court Petition that they seek monetary relief "in excess of \$200,000 but less than \$1,000,000." Petition ¶ 78. Accordingly, Plaintiffs seek damages in excess of \$75,000.00 exclusive of interest and costs, satisfying the amount in controversy requirement.

4. Complete diversity exists between the Plaintiffs and Defendant Liberty now as well as on the date of filing of the State Court Case. Plaintiffs are citizens and residents of the State of Texas. Petition at ¶ 1. The named Defendant Liberty is an insurance company incorporated in Illinois with its principal place of business in Massachusetts. Liberty is a citizen of Illinois and Massachusetts and not the State of Texas. As asserted in Liberty's Original Answer and Verified Denial, the proper defendant in this case is Liberty Insurance Corporation, which is an insurance company incorporated in the State of Illinois and its principal place of business is Boston, Massachusetts. Liberty is a citizen of Illinois and Massachusetts and not the State of Texas.

5. Plaintiffs have made a jury demand in the State Court Case.

II.
PROCEDURAL REQUIREMENTS

6. This action is a civil action which may be removed to this Court by Liberty pursuant to the provisions of 28 U.S.C. §§ 1441(a) and 1332(a) in that it is between citizens of different states; it is a civil action wherein the matter in controversy exceeds the sum of \$75,000.00, exclusive of interests and costs; and Liberty is not a citizen of the State of Texas.

7. Pursuant to 28 U.S.C. § 1446(d), written notice of filing of this Notice will be given to all adverse parties promptly after the filing of this Notice.

8. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice will be filed with the clerk of the 419th Judicial District Court of Travis County, Texas, promptly after the filing of this Notice.

10. Attached hereto and incorporated herein, are the following items:

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| Exhibit A: | A true and correct copy of all pleadings, process, and orders served in this action. |
| Exhibit B: | State Court Case docket sheet. |
| Exhibit C: | List of all counsel of record. |
| Exhibit D: | Index of all documents filed with the Court. |

WHEREFORE, PREMISES CONSIDERED, Defendant Liberty Mutual Insurance Corporation requests that this action be removed from the 419th Judicial District Court of Travis County, Texas, to the United States District Court for the Western District of Texas, Austin Division, and that this Court enter such further orders as may be necessary and appropriate.

Respectfully submitted,

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By: /s/ Catherine L. Hanna

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of November, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Via Facsimile (713) 322-5953

James M. McClenny

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